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Subject: Microsoft Settlement

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To whom it may concern,

Having read the testimony of the Senate Committee on the Judiciary, and the Court's Findings of Fact, I for one am against the proposed settlement because it will maintain the status quo. This will mean the continued absence of any compelling competition for software on the desktop. Any one of a neutral disposition, who has read the testimony and the Court's Findings of Fact, can clearly see the lack of justice when viewed against this landmark judgment.

The Supreme Court has explained that a remedies decree in an antitrust case must seek to 'unfetter a market from anticompetitive conduct,' Ford Motor Co., 405 U.S. at 577, to 'terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future,' United States v. United Shoe Mach. Corp., 391 U.S. 244, 250 (1968); see also United States v. Grinnell Corp., 384 U.S. 563, 577 (1966).

Where does the proposed settlement, 'terminate the illegal monopoly' and 'deny the defendant the fruits of its statutory violation?'

From the Court's Findings of Fact, Netscape, Sun, Apple, RealNetworks, IBM, and Intel have all suffered lost business because of Microsoft's anti-competitive behavior. From their standpoint, the proposed settlement must just look like a slap on the face. Where does the proposed settlement 'terminate the illegal monopoly' and 'deny the defendant the fruits of its statutory violation?' These two fundamental principles of remedy have not been addressed at all. Microsoft's market position will not change if this settlement is implemented. Remember what happened to AT&T's illegal telephone monopoly, and how that break-up brought to the consumer choice, better service, and lower costs. If this proposal is accepted, those who buy Microsoft's products will continue to pay over the top rates to use them.

If implemented, the proposed settlement that the DOJ has succumbed to will not change the industry for the better, but will continue to leave the consumer, government, and business, over a barrel; to suffer Microsoft's continued exploitation, whose ill-gotten gains (profits) continue to line the pockets of those company officers responsible for creating this illegal

monopoly. This can only be seen as 'payback' for breaking the law, and sets a terrible precedent for future antitrust litigation. Let's hope that Judge Kollar-Kotelly has the courage, and the law, to turn payback into blowback.

Let's remember that well known and often used adage, once bitten twice shy. Microsoft has chosen, all too often, to stretch forth its hand and eat from the forbidden fruit. It is now time that they were punished and expelled from their Eden of milk and honey. Microsoft has to be penalized with penalties that bite, which go way beyond the kindergarten settlement we have here today. This has to be done for two fundamental reasons. First symbolic. Microsoft has to be seen to be punished, which has to be commensurate in effect to the way it dealt with companies that it illegally competed against. This punishment will then draw a line in the sand, which for the future will bring to remembrance and serious reflection the serious penalties for stepping beyond the law. Second for competition. The market has to be given time to normalize to a competitive environment. Regulation, not another consent decree, will be required until market conditions allow companies of substance to hold their own against a convicted monopolist. Microsoft should not be left in a position where it is able to repeat conduct that an ideologically diverse Court of Appeals unanimously found illegal.

I am not a lawyer, but I do feel confident that this settlement will not meet the requirements of the Tunney Act. If by chance, there is a miscarriage of justice, it will not only be very sad day for justice, it will also cloud all future anti-trust litigation. Because of the courts' inability to punish illegal conduct with justice of equal measure to the crime, it will give a green light for more commerce law breaking. The saying will be, "if you want to stay in business act like Microsoft, if you don't, you'll end up a loser, like Netscape."

If US law should fail to meet out the requisite punishment for Microsoft, antitrust litigation against Microsoft will continue well into the future. AOL filed suit yesterday, the EEC have a case pending, half the State Attorneys don't agree with the settlement case here, and the judge in the private class action lawsuits ruled that settlement anti-competitive.

There is no argument against Microsoft's guilt, there is plain disagreement as to what that punishment should be. In his statement to the Senate Committee on the Judiciary, Senator Orrin G. Hatch said, "The Microsoft case - and its ultimate resolution - present one of the most important developments in antitrust law in recent memory. The proposed settlement does not justify the Senator's statement.

Let's remember Proverbs 29:18, "Where there is no vision, the people perish." I hope that Judge Kollar-Kottely is blessed with the wisdom and vision to ensure that justice meets its obligations.

Mario Rodrigues

